

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MATEO-FOSTER CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2012070022

ORDER GRANTING CONTINUANCE  
AND SETTING NEW PREHEARING  
CONFERENCE AND HEARING  
DATES

Hearing in this matter is set for December 4 through 6, 2012, with a telephonic prehearing conference on November 26, 2012. On November 21, 2012, Student filed a notice of a tentative settlement and request for continuance, which did not contain any signature on behalf of the District. Later the same date, the attorney for the District confirmed by telephone with the Office of Administrative Hearings (OAH), and faxed in a signature consenting to the request to continue the case.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings (OAH) considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

In this case, the record shows that the parties have already had several continuances since Student's request for a due process hearing was filed in July 2012. The parties now represent that they have negotiated a settlement contingent on third-party approval before they execute the agreement. Without going into further detail, OAH is supportive of the

settlement process to support this brief continuance. However, given the age of the case, the parties should note that no further continuances will be granted without a substantial showing of good cause.

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. This matter will be set on dates agreed to by the parties as follows:

Prehearing Conference: January 9, 2013, at 1:30 PM

Due Process Hearing: January 21, 2013, at 1:30 PM, and continuing thereafter day to day, Monday through Thursday, (9:00 AM) unless otherwise ordered.

2. Mediation and Other Matters: The parties may meet and confer to set a date to voluntarily participate in mediation prior to the hearing and notify OAH. All other matters relevant to preparing for hearing, including clarification of issues and identification of witnesses and exhibits, will be addressed at the prehearing conference.

3. Notice to Witnesses: The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

4. Settlement: Dates for the prehearing conference and the hearing will not be cancelled until a letter of withdrawal or request for dismissal with the signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should attend the scheduled prehearing conference and the hearing unless different arrangements have been agreed upon by the assigned ALJ or otherwise ordered by OAH.

IT IS SO ORDERED.

Dated: November 21, 2012

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings